STATE OF MICHIGAN

COURT OF APPEALS

MARGARET L. HALL, Plaintiff-Appellant,	UNPUBLISHED February 18, 2010
v	No. 286336 Oakland Circuit Court
SUSAN E. COHEN, Defendant-Appellee.	LC No. 2006-071709-NM

Before: Davis, P.J., and Fort Hood and Servitto, JJ.

PER CURIAM.

This legal malpractice action is before this Court for the second time. In a prior appeal, this Court reversed the trial court's order granting summary disposition to defendant under MCR 2.116(C)(7) based on collateral estoppel. *Hall v Cohen*, unpublished opinion per curiam of the Court of Appeals, issued January 30, 2007 (Docket No. 270949). On remand, the trial court again granted summary disposition in favor of defendant with respect to plaintiff's legal malpractice claim and also granted summary disposition to defendant on her counterclaim for unpaid attorney fees. The court subsequently entered a judgment for defendant for $47,909.39. Plaintiff appeals as of right. We affirm.

We first[1] consider plaintiff's challenge to the trial court's decision granting defendant summary disposition of plaintiff's legal malpractice action. We review a trial court's summary disposition decision de novo. *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 424; 715 NW2d 8 (2008). Although defendant presented multiple motions for summary disposition, the motions directed at plaintiff's assent to the underlying divorce settlement, the application of the doctrine of judicial estoppel, and the lack of causation all relate to whether there was factual support for the causation element of a legal malpractice action.

The trial court properly granted summary disposition to defendant under MCR 2.116(C)(10) based on plaintiff's failure to provide factual support for the causation element of

[1] We note that defendant challenged this Court's subject-matter jurisdiction. Although the claim of appeal was dated June 30, 2008, it was not filed until July 1, 2008, the same date that the trial court entered the final judgment. Therefore, this challenge is without merit.

legal malpractice. A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Healing Place at North Oakland Medical Ctr v Allstate Ins Co,* 277 Mich App 51, 55; 744 NW2d 174 (2007). In reviewing a motion under this subrule, a court considers the pleadings, affidavits, depositions, admissions, and other evidence submitted by the parties to the extent that it would be admissible as evidence, and reviews that evidence in a light most favorable to the nonmoving party. *Id.* at 56. The motion is properly granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp,* 469 Mich 177, 183; 665 NW2d 468 (2003).

As with any tort action, the causation element in a legal malpractice action requires proof of both causation in fact and legal or proximate cause. *Charles Rienhart Co v Winiemko,* 444 Mich 579, 586; 513 NW2d 773 (1994) (opinion by Riley, J.). The issue of proximate cause presents a question of law for the court. *Id*. In some situations, such as where an attorney's negligence prevents a client from timely bringing a cause of action, causation in fact requires proof that, but for the alleged negligence, the client would have succeeded in the underlying action. *Coleman v Gurwin,* 443 Mich 59, 63; 503 NW2d 435 (1993). Where the underlying action is settled, the attorney is benefited in a subsequent malpractice action only to the extent that the settlement affects damages. *Lowman v Karp,* 190 Mich App 448, 452; 476 NW2d 428 (1990). "When a settlement is compelled by the mistakes of the plaintiff's attorney, the attorney may be held liable for causing the client to settle for less than a properly represented client would have accepted." *Espinoza v Thomas,* 189 Mich App 110, 123; 472 NW2d 16 (1991). Additionally, a cause of action for legal malpractice may be raised when it can be shown that the client's consent to the settlement was compelled because prior misfeasance or nonfeasance by the attorney left no other recourse. *Id*. at 124 (citation omitted).

In this case, plaintiff's statements under oath at the December 4, 2003, settlement hearing in the divorce action indicate that she knowingly and voluntarily entered into an agreement with her husband to settle the divorce action based on a prior mediation proceeding, with some modifications, and to submit certain issues still in dispute to binding arbitration. Additionally, plaintiff testified that she agreed to the settlement because "I was feeling that I needed to do this and get it done with."

In light of this evidence, plaintiff has not demonstrated that the trial court erred in rejecting her claim that defendant's alleged negligence for failing to enforce prejudgment orders and her threat to withdraw from the divorce action exacerbated her financial situation and caused her to settle. Moreover, plaintiff has abandoned her argument on appeal to the extent that she fails to support her argument with documentary evidence and citations to the record. Specifically, plaintiff presented the lower court docket entries and argument that defendant exacerbated her financial situation's alleged negligence. However, plaintiff failed to present any financial documentation to support this claim.[2] "This Court will not search for factual support

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[2] Although plaintiff cites the docket entries of evidence of legal malpractice, plaintiff failed to present the deposition testimony of defendant to address why motions were filed but, according
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for a party's claim." *McIntosh v McIntosh*, 282 Mich App 471, 484-485; 768 NW2d 325 (2009); MCR 7.212(C)(7). Additionally, we note that plaintiff presented an affidavit from an expert to support her claim. However, the issue of causation presents a question of law for the court. *Winiemko*, *supra*. The duty to interpret and apply the law is allocated to the courts, not the parties' expert witnesses. *Hottmann v Hottmann*, 226 Mich App 171, 179-180; 572 NW2d 259 (1997). Because the requisite causal relationship between plaintiff's decision to settle in the divorce action and defendant's alleged negligence was not shown, we affirm the trial court's grant of summary disposition under MCR 2.116(C)(10) in favor of defendant.

In light of our decision to uphold the trial court's summary disposition ruling, it is unnecessary to consider the parties' arguments with respect to defendant's motion for summary disposition based on the acts of negligence alleged in ¶¶ 6(a) through (n) and (q) of plaintiff's complaint. Further, our decision upholding the trial court's summary disposition ruling is dispositive of plaintiff's claim that the legal malpractice action provided her with a defense to defendant's counterclaim for unpaid attorney fees. Because our decision renders any defense on this basis inapplicable, and plaintiff does not present any other reason for finding that the trial court erred in granting defendant summary disposition with respect to the counterclaim, we affirm that decision. Finally, we decline to consider defendant's argument that she is entitled to sanctions because plaintiff's appeal is vexatious. Such a request must be made in a motion. MCR 7.211(C)(8).

Affirmed.

/s/ Alton T. Davis
/s/ Karen M. Fort Hood
/s/ Deborah A. Servitto

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to the docket entries, were not heard by the lower court. Plaintiff alleged that the motions were not heard because of "empty" promises by plaintiff's ex-husband to make payments. However, there is no record support for that assertion and the deposition of plaintiff's ex-husband was not presented.